

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230013591

APPLICANT REQUESTS:

- reversal of the U.S. Army Human Resources Command (HRC) denial of Combat Related Special Compensation (CRSC) based upon:
  - Left Plantar Fasciitis, Pes Planus and Heel Spur\
  - Right Plantar Fasciitis
  - Pes Planus and Heel Spur
  - Lumbar Degenerative Disc Disease
  - Right Shoulder Osteoarthritis and Acromioclavicular Joint Separation
  - Left Shoulder Osteoarthritis and Bicep tendinitis
- personal appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- HRC CRSC Denial Letter, 19 July 2023
- Witness Statement – First Sergeant (1SG) Retired (RET) T-S-
- Witness Statement – Sergeant First Class (SFC) (RET) N-T-
- Witness Statement – Chief Warrant Officer Four (CW4) (RET) N-V-

FACTS:

1. The applicant states, in pertinent part, he is appealing HRC's final denial of his request for CRSC on 19 July 2023. He has requested his medical records for the period of January 2004 – January 2005 from the National Archive and Records Administration but is still waiting for their reply. In addition, he has provided evidence letters from his leadership at the time of his deployment in support of his request.

2. A review of the applicant's available service record reflects the following:

a. On 27 August 1996, he enlisted in the Regular Army and continued service through reenlistments.

b. On 1 July 2007, Task Force XII, 12th Combat Aviation Brigade issued Orders Number 182-701 for a temporary change of station deployment in support of Operation Iraqi Freedom for a period of 455 days, effective 2 July 2007.

c. On 23 August 2012, a Physical Evaluation Board (PEB) convened finding the applicant physically unfit for lumbar degenerative disc disease, headache syndrome, left shoulder osteoarthritis, impingement, right and left foot plantar fasciitis, right shoulder osteoarthritis, impingement, and bilateral tinnitus. The PEB recommended permanent disability retirement. He concurred and waived a formal hearing of his case.

d. On 22 October 2012, Headquarters, United States Army Garrison, Fort Benning, Directorate of Human Resources issued Orders Number 296-2229 releasing him from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability at the rate of 90 percent, effective 29 November 2012. Disability resulted from a combat related injury as defined in Title 26, USC, section 104: No.

e. On 1 November 2012, Headquarters, United States Army Garrison, Fort Benning, Directorate of Human Resources issued Orders Number 306-2220 amending Orders Number 296-2229 to reflect "Disability resulted from a combat related injury as defined in 26 United States Code 104: Yes."

f. DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 29 November 2012 reflects an honorable retirement for disability, permanent.

(1) Item 12 (Record of Service) shows service from 27 August 1996 to 29 November 2012 for a net active service this period of 16 years, 3 months, and 3 days.

(2) Item 18 (Remarks) shows:

- Served in a Designated Imminent Danger Pay Area
- Service in Iraq 1 July 2007 – 1 February 2008
- Service in Iraq 28 January 2004 – 28 January 2005

g. On 11 June 2013, he applied for CRSC. On 9 July 2013, HRC denied the initial request for Lumbar Degenerative Disc Disease at 40 percent noting the degenerative condition with no accident or injury to connect disability to a combat-related event, Right Shoulder Osteoarthritis and Acromioclavicular Joint Separation at 10 percent, and Left Shoulder Osteoarthritis and Bicep tendinitis at 20 percent as no documentation in claim to show that a combat-related event caused condition.

h. On 13 October 2020, HRC approved his subsequent request for CRSC

compensation for Bilateral Tinnitus at 10 percent and Bilateral Sensorineural Hearing Loss at 0 percent as combat-related due to an instrumentality of war, awarding a total of 10 percent CRSC Disability compensation. They denied his subsequent request for Left Plantar Fasciitis, Pes Planus and Heel Spur at 20 percent and Right Plantar Fasciitis, Pes Planus and Heel Spur at 20 percent noting the documentation does not show accident or incident connect disability to a combat-related event. They also denied his second request for Lumbar Degenerative Disc Disease at 40 percent, Right Shoulder Osteoarthritis and Acromioclavicular Joint Separation at 10 percent, and Left Shoulder Osteoarthritis and Bicep tendinitis at 20 percent noting no new medical evidence provided to show combat-related event caused condition.

i. On 4 April 2023, HRC approved his subsequent request for CRSC compensation for Chronic Sinusitis at 10 percent and Allergic Rhinitis at 10 percent as verified disability as combat-related due to an instrumentality of war, awarding a total of 30 percent CRSC Disability compensation. They denied his second request for Left Plantar Fasciitis, Pes Planus and Heel Spur at 20 percent and Right Plantar Fasciitis, Pes Planus and Heel Spur at 20 percent noting no new medical evidence provided to show combat-related event caused condition. They also denied his final request for Lumbar Degenerative Disc Disease at 40 percent, Right Shoulder Osteoarthritis and Acromioclavicular Joint Separation at 10 percent, and Left Shoulder Osteoarthritis and Bicep tendinitis at 20 percent noting no new medical evidence provided to show combat-related event caused condition.

j. On 19 July 2023, HRC CRSC sent him a letter stating, in effect, after reviewing all documentation in support of his claim, they were unable to overturn the previous adjudication(s). The documentation submitted still shows no new evidence to link requested conditions to a combat-related event. This decision is now considered final. If he would choose to appeal the decision, he must submit a notice of disagreement to the Army Review Boards Agency.

3. The applicant provides witness statements from his leadership at the time of his deployment to Iraq from January 2004 – January 2005, all of which account for the combat-related incident where the applicant was medically injured and incurred medical disability in the line of duty as a result of an instrumentality of war. They are as follows: Witness Statements from - 1SG (RET) T-S-; SFC (RET) N-T-; and CW4 (RET) N-V-

4. On 29 April 2024, the HRC, Chief, Special Compensation Branch, provided an advisory opinion stating, in effect the applicant submitted CRSC applications on 9 July 2013, 13 October 2020, 4 April 2023, and 19 July 2023. He has requested consideration for Lumbar Degenerative Disc Disorder (VA (Veterans Affairs) Code 52452), Left Shoulder Osteoarthritis and Bicep Tendinitis (VA Code 5003-5201 ), Left Planter Fasciitis, Pes Planus and Heel Spur (VA Code 5276-5284), Right Planter Fasciitis, Pes Planus and Heel Spur (VA Code 5276-5284), and Right Shoulder Osteoarthritis and

Acromioclavicular Joint Separation (VA Code 5003-5201 ); however, their office was unable to verify a combat related event in relation to his condition. His claim has now been reviewed at initial & reconsideration levels and denied due to insufficient evidence.

a. The applicant's DA Form 199 (Informal PEB Proceedings) states that the "Soldier reports his back and shoulder injuries is from combat related training in 2004 during a three-day convoy from Kuwait to Tikrit, Iraq." He has not provided any medical documentation to support this statement. Although the injury happened in a deployment environment, by program guidance, it does not automatically qualify for CRSC. He also stated that his injuries were from the lifting of heavy equipment, this again does not qualify for CRSC. In order for an injury to qualify for CRSC, it must be related to a combat related event.

b. He requested consideration for Left and Right Planter Fasciitis, Pes Planus and Heel Spur, but he did not provide medical documentations showing a combat related event that caused the injury.

c. They have reviewed all documentation submitted by the applicant and available medical records but did not find documentation which confirms his injuries, as required by program guidelines. He submitted as evidence the DA Form 199 that found his conditions to be combat related due to armed conflict; however, Physical Disability Agency determinations are in reference to other laws than CRSC. This means that although the PEB states a disability is combat related under 26 USC 104 or 10 USC 10216, the disability does not automatically qualify for CRSC. The CRSC program is managed under the provisions of 10 USC 1413a and DoD FMR 7000.14-R Volume 7B, Chapter 63. Due to the differences in program guidance, our office must verify the condition is combat-related independent from the PEB's findings.

d. He submitted a personal statement; however, we cannot accept personal statements as a source document. We acknowledge the letter from CW4 NV as a document, but we cannot accept buddy statements as a source document. He has submitted some medical records, but they do not show how the injury occurred or do not the qualification for CRSC approval. The burden of proof rest on the member.

5. On 9 August 2024, the applicant was provided with a copy of the advisory opinion to provide a response. As of 16 August 2024, he did not respond.

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant requests CRSC for multiple medical conditions listed on his PEB. The Board reviewed and agreed with the advisory official's determination that documentation submitted by the applicant do not show a link of the requested conditions to a combat-related event. Although injuries or medical conditions may occur in a deployment environment, by CRSC program guidance, such injuries or illnesses do not automatically qualify for CRSC. In order for an injury to qualify for CRSC, the condition must be related to a combat related event. Board on the overall evidence, the Board determined relief is not warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.<sup>2</sup>

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Department of Defense (DOD) Financial Management Regulation 7000.14-R Volume 7B (Military Pay Policy – Retired Pay) provides in Chapter 63 (Combat Related Special Compensation (CRSC)) that CRSC is special compensation to members of the Uniformed Services who have retired pay reduced because of receiving U.S. Department of Veterans Affairs (VA) disability compensation where a portion of such VA disability compensation is the result of disabilities that are combat-related as determined by the Military Department. The CRSC program became effective 31 May 2003. Payments are made on the first day of the first month following the month in which the compensation accrued, provided the member is receiving VA disability compensation for a disability that has been determined to be combat-related by the Military Department.

a. CRSC is a monthly entitlement. A retiree is entitled to CRSC for each month during which, for the entire month, the member has applied for and elected CRSC under these provisions, meets preliminary CRSC criteria, and meets final CRSC criteria.

b. With regard to the effective date, payments are made on the first day of the first month following the month in which the compensation accrued, provided the member is receiving VA disability compensation for a disability that has been determined to be combat-related by the Military Department. A member may submit an application for CRSC at any time and, if otherwise qualified for CRSC, compensation will be paid for any month after May 2003 for which all conditions of eligibility were met.

c. Disability ratings by the Secretary of the Military Department concerned (or designee), as of the date on which the member retired, may be used to help make determinations of whether the member meets preliminary CRSC criteria. The actual computation of the amount of CRSC payable to an eligible retiree is based solely on VA disability determinations and the amount of VA compensation paid, without regard to any disability that is not combat-related.

d. When the VA makes a retroactive increase in a member's VA disability compensation pertinent to a member's combat-related disabilities under CRSC, DFAS and VA will exchange data to determine the additional retroactive amount that the member is entitled to receive as the result of CRSC. DFAS will compute the additional entitlement and advise VA in order for VA to pay the member the appropriate additional authorized VA disability compensation. Any increase affecting CRSC qualified disabilities in the current month requires that CRSC be re-computed.

e. Section 630502 states, a combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule Rating of Disabilities (VASRD). The

Military Departments will determine whether a disability is combat-related based on the following criteria:

- as a direct result of armed conflict
- while engaged in hazardous service
- in the performance of duty under conditions simulating war, or
- through an instrumentality of war

f. The Department will record for each disability determined to be combat-related which of the circumstances provided qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made on the basis of the program criteria.

g. Section 6306 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

a. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination, it is not sufficient to only state the fact that a member incurred the disability during a period of war, in an area of armed conflict, or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.

b. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

(2) In the Performance of Duty Under Conditions Simulating War. In general, performance of duty under conditions simulating war covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

(3) Instrumentality of War:

a. There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member's disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service.

b. An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for military service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to military service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

c. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

d. For example, if a member is on a field exercise, and is engaged in a sporting activity and falls and strikes an armored vehicle, then the injury will not be considered to result from the instrumentality of war (armored vehicle) because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the member, then the injury would be considered the result of an instrumentality of war.

2. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

b. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Title 38, United States Code, sections 1110 and 1131, permit the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations,



awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered physically unfit for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

//NOTHING FOLLOWS//